

# *Brownfield*

## *and Contaminated Site Remediation Act*



### **Information and Application for Reimbursement**

# **BROWNFIELD AND CONTAMINATED SITE REMEDICATION ACT**

**(N.J.S.A. 58:10B-1 et seq.)**

The Brownfield and Contaminated Site Remediation Act was enacted January 6, 1998, and provides for the creation of a fund known as the "Brownfield Site Reimbursement Fund." Money in the fund is dedicated to the purpose of reimbursing developers up to 75% of their remediation costs through redevelopment agreements with the New Jersey Commerce and Economic Growth Commission and the State Treasurer. These reimbursement moneys would be derived from certain new specific State tax revenue that is realized from the redevelopment project.



mental Protection, the Department of the Treasury, and the Division of Taxation. At this meeting the applicant must outline all the terms of its redevelopment project including but not limited to information relating to ownership of property, the type of contamination, the liable party for the contamination, the developer, a prospectus of the intended development, and the type and estimate of new taxes to be generated from new business located on the site.

## **Memorandum of Agreement**

Applicant will enter into a Memorandum of Agreement or other oversight document with the Commissioner of Environmental Protection for the remediation of contamination of the subject property located on the site of the redevelopment project. This memorandum will set forth the required activities to be performed by the applicant to ensure the proper remediation of the contamination at, and emanating from, the site in accordance with a DEP approved plan. There are at least four standard steps required by the Department of Environmental Protection in any remediation procedure:

- a. Preliminary Assessment and Site Investigation

- b. Remedial Work Plan and Report
- c. Remedial Action Work Plan
- d. Remedial Action

## **Redevelopment Agreement**

Once the Memorandum of Agreement is in place an applicant will file an application with the New Jersey Commerce and Economic Growth Commission and execute a Redevelopment Agreement with the State Treasurer and the New Jersey Commerce and Economic Growth Commission outlining the requirements of the developer in order to be entitled to reimbursement of any remediation costs. This application must be filed with the New Jersey Commerce and Economic Growth Commission prior to the actual remediation. Reimbursable remediation costs, however, may include any costs incurred by the developer prior to the filing of the application which are incidental to and necessary for the development of a Memorandum of Agreement, preliminary assessment and site investigation, remedial investigation, and the remedial work plan. The State may *not* enter into a Redevelopment Agreement with a developer who is liable under N.J.S.A. 58:10-23:11g for the contamination of the property. Applicants must be able to certify that they are not responsible parties.

## **Reimbursement of Closure Costs**

To apply for reimbursement of any moneys expended in the remediation of contaminated property an applicant shall take the following steps:

### **Joint Meeting**

Prior to filing any application with the New Jersey Commerce and Economic Growth Commission, the applicant must attend a preapplication meeting with representatives of the New Jersey Commerce and Economic Growth Commission, the New Jersey Department of Environ-

When deciding whether or not to enter into a Redevelopment Agreement with the developer, the New Jersey Commerce and Economic Growth Commission and the State Treasurer will consider the factors set forth in N.J.S.A. 58:10B-27b.

## Application to Division of Taxation

Upon completion of the project and before commencement of a functioning business operation on the site, applicant shall submit an application, on a required form (see Attachment A), to the Director of the Division of Taxation for certification of any reimbursement of remediation costs. This application shall contain:

- a. A certification setting forth the total remediation costs incurred as provided in the Redevelopment Agreement and approved by the Department of Environmental Protection;
- b. A statement that a place of business or the construction of new residential units are located in the area which is the subject of the Redevelopment Agreement that has generated *new* tax revenues;
- c. Information regarding the occupancy rate of the buildings, other work areas, or residential units located on the subject property; and
- d. Any such other information as the Director deems necessary.

Applicant will also supply the Division of Taxation with a list of the retail vendors or other businesses at the site which will be generating any new tax revenues specifically set forth in N.J.S.A.

58:10B-30, as well as properly documented receipts evidencing sales tax paid for materials used for the construction of new residences at the site of the redevelopment project. The Director shall review the request and shall approve or deny the application on a timely basis. The Director is required to certify a developer to be eligible for reimbursement if:

1. Residential construction is complete or a place of business is located in the area subject to the Redevelopment Agreement that has generated new tax revenues;
2. The developer has entered into a Memorandum of Agreement or other oversight document with the Commissioner of Environmental Protection for the sound and proper remediation of the site of the redevelopment project and is in compliance with the said Memorandum of Agreement or other oversight document; and
3. The costs of the remediation were actually and reasonably incurred.

## Creation of Special Fund

Pursuant to the statute, there is created in the Department of the Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in this fund are dedicated to the purpose of reimbursing the developer who has complied with all aspects of the Act in an amount up to 75% of the remediation



costs. A special account within the fund shall be credited for each developer upon approval of a certification from the Director of the Division of Taxation. The fund shall be credited with new tax revenues (see Attachment B) generated from the redevelopment project as set forth above.

## Periodic Reimbursement

Reimbursement payments from the fund shall be made to the developer at the frequency and over the time period as provided in the Redevelopment Agreement. Twenty-five percent of any reimbursement shall be withheld by the Department of the Treasury and not released to the applicant until the refund period for applicable tax revenues has expired in accordance with the State Tax Uniform Procedure Law (N.J.S.A. 54:49-14). No reimbursements shall be made until an equal amount of tax revenues from the redevelopment project have been realized by the State.

## Contact Parties

The following are the contact persons from each department:

**Commerce & Economic Growth**  
James Simmons 609-292-5392  
Fax: 609-633-8004

**Environmental Protection**  
Colleen Kokas 609-633-1499  
Fax: 609-633-1439

**Treasury – Taxation**  
Curtis Seifert 609-984-5111  
Fax: 609-989-0113

ATTACHMENT A



STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION  
PO BOX 269  
TRENTON, N.J. 08695-0269

**APPLICATION FOR REIMBURSEMENT OF REMEDIATION COSTS UNDER THE  
BROWNFIELD AND CONTAMINATED SITE REMEDIATION ACT**

TO: Office of the Director  
Division of Taxation  
PO Box 269  
Trenton, NJ 08695-0269  
Attn: S. Curtis Seifert

The developer does hereby certify that:

1. Check one:
  - ☐ The place of business which is the subject of this application is located in the area which is the subject of a Redevelopment Agreement entered into with the New Jersey Commerce and Economic Growth Commission and the New Jersey State Treasurer and has generated new tax revenues.
  - ☐ Residential construction has been completed in the area which is the subject of a Redevelopment Agreement entered into with the New Jersey Commerce and Economic Growth Commission and the New Jersey State Treasurer.
2. He has entered into a Memorandum of Agreement or other oversight document with the Commissioner of Environmental Protection and is in compliance with same and has received a Letter of No Further Action issued by DEP.
3. He has entered into a Redevelopment Agreement with the State and is in compliance with same.
4. The total remediation costs actually and reasonably incurred and paid for subject property amounts to \$\_\_\_\_\_. Developer has paid for all applicable oversight costs with DEP.
5. Check all appropriate boxes:
  - ☐ He has not received any property tax exemption for the subject property pursuant to the Environmental Opportunity Zone Act.
  - ☐ He has received a property tax exemption for the subject property pursuant to the Environmental Opportunity Zone Act in the amount of \$\_\_\_\_\_ and has made in lieu of tax payments in the amount of \$\_\_\_\_\_.
  - ☐ He has not received any other State, Local, or Federal tax incentives or grants to remediate the subject property.
  - ☐ He has received other State, Local, or Federal tax incentives or grants to remediate the subject property in the amount of \$\_\_\_\_\_.
6. The occupancy rate of buildings or residential units subject to the Redevelopment Agreement is \_\_\_\_\_%.

I do hereby certify the above information to be true and correct and submitted for the purpose of obtaining approval for reimbursement of remediation costs pursuant to N.J.S.A. 58:10B-28.

DEVELOPER:

BY: \_\_\_\_\_  
(Title)

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

## **ATTACHMENT B**

### **TAXES DEPOSITED INTO THE BROWNFIELD SITE REIMBURSEMENT FUND (N.J.S.A. 58:10B-30)**

#### **Corporation Business (Franchise) Tax (N.J.S.A. 54:10A-1)**

In general, the tax is imposed at the rate of 9% on entire net income allocated to New Jersey at Brownfield site. There is a minimum tax imposed on domestic corporations in the amount of \$500.

#### **Taxation Imposed on Marine Insurance Companies (N.J.S.A. 54:16-1)**

The tax is imposed on insurers transacting marine insurance business in New Jersey and is based on the underwriting profit of such policies.

#### **Taxation Imposed on Corporations, Individuals, Partnerships, and Unincorporated Associations Transacting Insurance Business (N.J.S.A. 54:18A-1)**

The tax is imposed on insurance companies (except life insurance companies and marine insurance) at the rate of 2% of the taxable premiums, however, premiums under Group, Accident, and Health insurance policies on residents of this State are subject to tax at the rate of 1%.

#### **Public Utility Franchise Tax, Public Utility Gross Receipts Tax, Public Utility Excise Tax (N.J.S.A. 54:30A16 et seq. and N.J.S.A. 54:30A49 et seq.)**

The franchise and gross receipts taxes were repealed effective January 1, 1998. However, sewer and water companies still remain subject to the gross receipts tax.

#### **Taxation Imposed on Net Profits From Business (N.J.S.A. 54A:5-1(b))**

New Jersey gross income for purposes of the New Jersey Gross Income Tax Act includes net income from the operation of a business at the site.

#### **Taxation on a Distributive Share of Partnership Income (N.J.S.A. 54A:5-1(k))**

A taxpayer's distributive share of partnership income is included in gross income for the purposes of subjectivity to the New Jersey gross income tax.

#### **Taxation of a Pro Rata Share of S Corporation Income (N.J.S.A. 54A:5-1(p))**

A taxpayer's net pro rata share of S corporation income must be included in gross income, whether or not actually distributed to the shareholder during the shareholder's taxable year.

#### **New Jersey Sales and Use Tax (N.J.S.A. 54:32B-1)**

A tax is imposed at the rate of 6%.

- a. Derived from taxable sales from a business at the site of the redevelopment project.
- b. From the purchase of materials used for the remediation in the construction of new structures, or the construction of new residences at the site of a redevelopment project.

#### **Realty Transfer Fee (N.J.S.A. 46:15-7)**

Fee derived from the sale of real property (except new construction) at the site of the redevelopment project which is paid into the general fund of the State Treasury.

**State of New Jersey  
Department of the Treasury  
Division of Taxation  
Technical Services  
Regulatory Services Branch  
PO Box 269  
Trenton, NJ 08695-0269**